

405 KAR 30:240. Protection of fish, wildlife, and related environmental values.

RELATES TO: KRS 350.600

STATUTORY AUTHORITY: KRS 224.033, 350.028, 350.050, 350.600

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.600 requires the Environmental and Public Protection Cabinet to develop administrative regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This administrative regulation sets forth specific requirements and measures for the protection of fish, wildlife, and related environmental values and the enhancement of such resources where practicable.

Section 1. Protection of Fish, Wildlife, and Related Environmental Values. (1) Any permittee shall, to the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the activities on fish, wildlife, and related environmental values, and achieve enhancement of such resources where practicable.

(2) A permittee shall promptly report to the cabinet the presence in the permit area of any critical habitat of a threatened or endangered species listed by the Secretary of the Interior, any plant or animal listed by the Commonwealth of Kentucky as threatened or endangered, or any bald or golden eagle, of which that person becomes aware and which was not previously reported to the cabinet by that person.

(3) A permittee shall ensure that the design and construction of electric power lines and other transmission facilities used for or incidental to the oil shale operation on the permit area are in accordance with the guidelines set forth in "Environmental Criteria for Electric Transmission System" (USDI, USDA (1970)), or in alternative guidance manuals approved by the cabinet. Distribution lines shall be designed and constructed in accordance with REA Bulletin 61-10 "Powerline Contacts by Eagles and Other Large Birds" or in alternative guidance manuals approved by the cabinet.

(4) Each permittee shall to the extent possible using the best technology currently available:

(a) Locate and operate haul and access roads and overland conveyor systems so as to avoid or minimize impacts to important fish and wildlife species or other species protected by state or federal law;

(b) Fence roadways where specified by the cabinet to guide locally important wildlife to roadway underpasses. No new barrier shall be created in known and important wildlife migration routes;

(c) Fence, cover, or use other appropriate methods to exclude wildlife from ponds which contain hazardous concentrations of toxic-forming materials;

(d) Restore, enhance where practicable, or avoid disturbances to habitats of unusually high value for fish and wildlife;

(e) Restore, enhance where practicable, or maintain natural riparian vegetation on the banks of streams, lakes, and other wetland areas;

(f) Afford protection to aquatic communities by avoiding stream channels or restoring stream channels as required in 405 KAR 30:310, Section 2;

(g) Not use persistent pesticides on the area during operations unless approved by the cabinet;

(h) To the extent possible prevent, control, and suppress fires which are not approved by the cabinet as part of a management plan;

(i) If fish and wildlife habitat is to be a primary or secondary postmining land use, the operator shall, in addition to the requirements of 405 KAR 38:400:

1. Select plant species to be used on reclaimed areas, based on the following criteria: their proven nutritional value for fish and wildlife; their uses as cover for fish and wildlife; and their ability to support and enhance fish and wildlife habitat after release of bonds; and

2. Distribute plant groupings to maximize benefit to fish and wildlife. Plants should be grouped and distributed in a manner which optimizes edge effect, cover, and other benefits for fish and wildlife;

(j) Where cropland is to be the alternative postmining land use on lands diverted from a fish and wildlife premining land use, and where appropriate for wildlife and crop management practices, intersperse the fields with trees, hedges or fence rows throughout the harvested area to break up large blocks of monoculture and to diversify habitat types of birds and other animals. Wetlands shall be preserved or created rather than drained or otherwise permanently abolished; and

(k) Where the primary land use is to be residential, public service, or industrial land use, intersperse reclaimed lands with greenbelts, utilizing species of grass, shrubs and trees useful as food and cover for birds and small animals, unless such greenbelts are inconsistent with the approved postmining land use. (8 Ky.R. 114; eff. 3-1-1982; TAm eff. 8-9-2007; Crt eff. 7-3-2018.)